IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17077 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

TILAKPURI BHANVARPURI GOSWAMI

Versus

COMMISSIONER OF POLICE, AHMEDABAD

Appearance:

1. Special Civil Application No. 17077 of 2004

MR AMRISH K PANDYA for Mr. SANJAY PRAJAPATI for Petitioner

MR HM PRACHCHHAK AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 23/02/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the

petitioner challenging his detention in pursuance of the order passed against him by Police Commissioner, Ahmedabad City, on 21st of September, 2004, in exercise of powers conferred upon him under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The petitioner is under detention as bootlegger from 21st of September, 2004 in pursuance of the above order.

2. The grounds of detention as placed on record reveal that the detaining authority took into consideration filing of solitary criminal case against the petitioner before Odhav Police Station, on 18th of September, 2004, under the Bombay Prohibition Act, wherein it was alleged that the petitioner was found in possession of 240 bottles of prohibited foreign liquor. The detaining authority thoroughly examined the investigation papers of the said crime registered against the petitioner and came to the conclusion that the petitioner was engaged in storing, selling and transporting prohibited foreign liquor. The detaining authority concluded that the activities of the petitioner were prejudicial to the maintenance of public order. The detaining authority also concluded that the petitioner was bootlegger within the meaning of the PASA Act. The detaining authority reached to the subjective satisfaction that the illegal bootlegging activities of the petitioner were required to be prevented forthwith. After taking into consideration other remedies available against the petitioner under the general law, the detaining authority came to the conclusion that there was no other alternative except to detain the petitioner under the PASA Act. The detaining authority therefore passed the order directing the detention of the petitioner under the PASA Act as bootlegger, which is under challenge in this Special Civil Application.

3. Learned Advocate Mr. Amrish K Pandya for learned Advocate Mr. Sanjay Prajapati for the petitioner and learned AGP Ms.H.M. Prachchhak for the respondents were heard at length.

4. Out of various grounds urged on behalf of the petitioner to challenge the order of detention as opposed and controverted by learned AGP, it appears that this petition can be examined and disposed of on the sole issue that whether the detaining authority applied mind properly to the material placed before him.

5. From the grounds of detention it is clear that the petitioner was in judicial custody when the order of

detention came to be served upon him in the crime registered against the petitioner. In this respect, the detaining authority reached to the subjective satisfaction that the petitioner was likely to file an application for bail at any time before the competent court and so moving such application by the petitioner, he was likely to be released on bail by the court. The detaining authority also came to the conclusion that on so releasing the petitioner on bail, he was likely to continue his bootlegging activities.

6. The facts of the present case are squarely covered by a decision of the Apex Court in the matter of AMRITLAL vs. UNION GOVERNMENT, as reported in AIR 2000 SC 3675, where the Apex Court observed that there must be cogent materials before the Officer passing the detention order that the detenu was likely to be released on bail. The inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention. Likelihood of detenu's moving an application for bail was not a cogent material and detention order based on such material was held liable to be quashed.

7. In the present case, on going through the grounds of detention, it becomes clear that there was no material was placed before the detaining authority to infer that the petitioner was likely to move bail application. There was no material at all also placed before the detaining authority to further infer that on so moving the application for bail, the petitioner was likely to be released on bail by the court. The inferences drawn by the detaining authority therefore is not based at all on any material. The subjective satisfaction, therefore, arrived at by the detaining authority that on releasing the petitioner on bail, he was likely to continue his bootlegging activities, is not valid, legal and in accordance with law. The order under challenge is required to be quashed on this ground alone.

8. In the result, the petition is allowed. The order passed by the Commissioner of Police, Ahmedabad City, on 21.9.2004, against the petitioner in exercise of powers under Section 3(1) of the PASA Act is hereby quashed and set aside. The detenu - Tilakpuri Bhanvarpuri Goswami is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute. DS permitted.

(J.R. VORA, J.)

p.n.nair